Nos. 13-1421, 14-163

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IN THE

Supreme Court of the United States

BANK OF AMERICA, N.A.,

Petitioner,

v.

DAVID B. CAULKETT,

Respondent.

BANK OF AMERICA, N.A.,

Petitioner,

v.

EDELMIRO TOLEDO-CARDONA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Section 506(d) of the Bankruptcy Code provides in relevant part that "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." In *Dewsnup* v. *Timm*, 502 U.S. 410 (1992), this Court held that §506(d) does not permit a chapter 7 debtor to "strip down" a mortgage lien to the current value of the collateral. The question presented in this case is whether §506(d) permits a chapter 7 debtor to "strip off" a junior mortgage lien in its entirety when the outstanding debt owed to a senior lienholder exceeds the current value of the collateral.

CORPORATE DISCLOSURE STATEMENT

Petitioner Bank of America, N.A. is a wholly owned subsidiary of Bank of America Corporation, a publicly traded corporation (ticker symbol: BAC). Bank of America Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

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BRIEF FOR PETITIONER

OPINIONS BELOW

In *Bank of America, N.A.* v. *Caulkett*, No. 13-1421, the court of appeals' order affirming the district court is unpublished and appears at Pet. App. 1a-2a. The district court's order affirming the bankruptcy court is unpublished and appears at Pet. App. 3a. The bank-

ruptcy court's order is unpublished and appears at Pet. App. 5a-7a.

In *Bank of America, N.A.* v. *Toledo-Cardona*, No. 14-163, the court of appeals' order affirming the district court is unpublished and appears at Pet. App. 1a-3a. The district court's order affirming the bankruptcy court is unpublished and appears at Pet. App. 5a-6a. The bankruptcy court's order is unpublished and appears at Pet. App. 7a-9a.

JURISDICTION

In *Caulkett*, the Eleventh Circuit entered its judgment affirming the district court on May 21, 2014. Pet. App. 1a-2a. In *Toledo-Cardona*, the Eleventh Circuit entered its judgment affirming the district court on May 15, 2014. Pet. App. 1a-3a. The petitions for a writ of certiorari were filed on May 23, 2014, and August 13, 2014, respectively. This Court granted certiorari and consolidated the cases on November 17, 2014. The Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

Section 506 of the Bankruptcy Code provides in relevant part:

> (a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim.
>
> ...

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—
>
> (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
>
> (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

11 U.S.C. §506. The entire text of §506, along with other relevant statutory provisions, is included in the addendum to this brief.

INTRODUCTION

In *Dewsnup* v. *Timm*, 502 U.S. 410 (1992), this Court held that when property securing a loan is worth less than the debt owing on the loan—that is, the loan is "underwater"—the Bankruptcy Code does not permit a chapter 7 debtor to "strip down" the lien to the current value of the property. In doing so, the Court construed §506(d) of the Code to void a lien only when the underlying right to payment the lien secures is invalid. *Id.* at 417. Section 506(d), the Court held, does *not* reduce liens to the current value of the collateral: It is simply "not plausible" that Congress intended to grant debtors that "broad new remedy ... without [its] being mentioned somewhere in the Code itself or in the annals of Congress." *Id.* at 420. Rather, under chapter 7 of the Bankruptcy Code as under more than a century of pre-Code practice, liens securing valid claims "pass through bankruptcy unaffected." *Id.* at 417.

Dewsnup was decided in the context of a *partially* underwater lien. The question presented here is

whether a chapter 7 debtor may strip off a *wholly* underwater lien—specifically, a junior mortgage on a house worth less than the debt outstanding on the senior mortgage. Every court of appeals to address the question—except the Eleventh Circuit below—has held that, under *Dewsnup*, the answer is no. And, under *Dewsnup*, that is the only possible answer. *Dewsnup* held that in chapter 7, liens securing valid claims stay with the property until foreclosure or until the debt is paid in full. 502 U.S. at 417. As a commonsense matter, that is true whether the value of the collateral at the time of the bankruptcy is $1 million, one cent, or zero. "[A]ny increase in the value of the property" before foreclosure "rightly accrues to the benefit of the creditor." *Id.* In fact, that is what it means to have a lien.

The Eleventh Circuit nowhere identified any logical or doctrinal distinction between partially and wholly underwater liens that could support its contrary holding. Instead, the panel merely invoked the rule that "'a later panel may depart from an earlier panel's decision only when [an] intervening Supreme Court decision is "clearly on point,"'" and then asserted without analysis that *Dewsnup* is not "clearly on point" in a case involving an entirely underwater lien. *Caulkett* Pet. App. 12a. The court thus followed its own pre-*Dewsnup* precedent holding that §506(d) voids underwater liens, even while acknowledging that "the Supreme Court's reasoning in *Dewsnup* seems to reject" that precedent. *Id.*

As the Eleventh Circuit itself all but admitted, its decision cannot be reconciled with *Dewsnup*. This Court need go no further to resolve this case. Should respondents or their amici urge the Court to revisit *Dewsnup*, however, the Court should refuse the invitation. Not only was *Dewsnup* correctly decided, but in

the twenty years since, Congress has repeatedly acquiesced in *Dewsnup*'s interpretation of the statute.

STATEMENT

I. LEGAL BACKGROUND

A. The Two Components Of A Home Mortgage

This case involves the treatment of home mortgage loans in chapter 7 bankruptcy proceedings. A typical home mortgage has two components: a note—a document in which the homeowner promises to repay the lender—and a lien or deed of trust securing that promise. The lien is a property interest in the house under which the lender has the right to foreclose on the house if the homeowner defaults on his or her obligations under the note. The right to repayment from the homeowner and the right to foreclose on the house in the event of default are two distinct legal interests. The right to repayment runs against the borrower personally, while the right to foreclose in the event of default is an *in rem* interest in the house itself. *See generally Johnson* v. *Home State Bank*, 501 U.S. 78 (1991).

Both outside and inside bankruptcy, the lender's right to pursue the borrower *in personam* for repayment on the loan is different, and is treated differently, than the lender's *in rem* right to foreclose on the house in the event of default. *See* 4 *Collier on Bankruptcy* ¶506.06[4][a] (16th ed. 2014). As discussed in detail below, the Bankruptcy Code treats the lender's right to repayment from the debtor as a "claim." 11 U.S.C. §101(5). The lender's property interest in the house, by contrast, is a "lien." *Id.* §101(37). The Code consistently distinguishes between the two rights. For instance, a mortgage lender's prebankruptcy claim—its right to payment from the debtor personally—may be dis-

chargeable in a chapter 7 bankruptcy. By contrast, the lender's lien survives discharge in a chapter 7 case, and can be asserted against the house after bankruptcy if the debtor is in default on the note. *See Johnson*, 501 U.S. at 84. The distinction between a creditor's claim and its lien is a key feature of the architecture of the Bankruptcy Code and is critical to this case.

B. Chapter 7 Bankruptcy

1. "Chapter 7 of the Bankruptcy Code gives an insolvent debtor the opportunity to discharge his debts by liquidating his assets to pay his creditors." *Law* v. *Siegel*, 134 S. Ct. 1188, 1192 (2014). The filing of a chapter 7 petition creates a bankruptcy estate, which includes substantially "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1). An individual debtor may, however, exempt certain property from the bankruptcy estate, thereby shielding it from creditors. *Id.* §522; *see Law*, 134 S. Ct. at 1192. A chapter 7 petition also triggers the appointment of a chapter 7 trustee, whose duties include "collect[ing] and reduc[ing] to money the property of the estate," 11 U.S.C. §704(a)(1), and distributing the proceeds to creditors, *id.* §726.

Once a bankruptcy petition is filed, an automatic stay takes effect, barring creditors from attempting to enforce or collect prepetition claims against the debtor or the estate. 11 U.S.C. §362(a). The automatic stay halts the proverbial race to the courthouse, which would otherwise result in first-come, first-served treatment of unsecured creditors. *See, e.g., id.* §362(a)(1). It also temporarily prevents secured creditors such as mortgage lenders from exercising their right to foreclose on their collateral in the event of default. *See, e.g., id.* §362(a)(4). The automatic stay

thereby ensures that the trustee can marshal and liquidate all the estate's property without competition from creditors and distribute that property to creditors equitably and in accordance with their lawful priority. *See* 3 *Collier on Bankruptcy* ¶362.03.

A prepetition creditor may assert its right to payment from the estate by filing a proof of claim. 11 U.S.C. §501(a). The claim is deemed "allowed"—that is, valid—unless a party in interest objects. *Id.* §502(a). If a party in interest does object, the court determines, after notice and hearing, whether to allow the claim. *Id.* §502(b). Such claims are allowed unless they are "unenforceable against the debtor ... under any agreement or applicable [non-bankruptcy] law," *id.* §502(b)(1), or fall into certain other narrowly defined categories, *id.* §502(b)(2)-(9), in which case they are "disallowed." "Creditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation," *Raleigh* v. *Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000), and bankruptcy courts must therefore "consult state law in determining the validity of most claims," *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Creditors with allowed claims are entitled to receive a distribution from the estate. The treatment of a claim depends, in the first instance, on whether the claim is secured by a lien with recourse to collateral. Creditors with a lien on particular property have the first right to the proceeds of that property; if there is more than one such creditor, creditors holding liens that are senior under applicable nonbankruptcy law recover before creditors holding junior liens. As discussed in more detail below, *see infra* pp.10-11, if a lienholder's collateral is insufficient to satisfy its al-

lowed claim (that is, the claim is undersecured), the lienholder may assert an unsecured claim for the deficiency. 11 U.S.C. §506(a).

Only property of the estate that remains after satisfaction of secured claims is available for distribution to those holding unsecured claims. If any such property exists, holders of unsecured claims receive a pro rata distribution from that property in accordance with their statutory priority. 11 U.S.C. §726(a); *see id.* §507(a) (granting priority to certain unsecured claims).

At the end of the case, an individual chapter 7 debtor will typically receive a discharge of most prepetition debts. *See* 11 U.S.C. §§524, 727.[1] That is, a prepetition creditor will no longer have the right to collect such a debt from the debtor, whether or not the creditor has received any distribution from the estate. The discharge "operates as an injunction against the commencement or continuation of an action ... to collect ... any such debt as a personal liability of the debtor." *Id.* §524(a)(2).

As the wording of §524 indicates, however, a chapter 7 proceeding discharges only the debtor's personal liability on his or her debts; it does not affect a secured creditor's nonbankruptcy right to enforce its lien. *See Johnson*, 501 U.S. at 84 (the chapter 7 discharge "extinguishes only one mode of enforcing a [right to payment]—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*"). Thus, if a debtor keeps his or her house after chapter 7 bankruptcy, a prepetition

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[1] The debtor may be denied a discharge for certain misconduct, 11 U.S.C. §727(a), and certain debts are nondischargeable, *id.* §523(a).

mortgage lender can still foreclose on the house if the debtor defaults on the loan, even though the lender cannot pursue the debtor personally for any deficiency remaining after foreclosure. *See id.* at 86 ("[T]he mortgage interest that passes through a Chapter 7 liquidation is enforceable only against the debtor's property" and "has the same properties as a nonrecourse loan.").

2. In practice, the vast majority of individual chapter 7 cases are so-called "no asset" cases—cases in which the trustee does not collect any funds for distribution to creditors with unsecured claims.[2] After subtracting the assets they are entitled to exempt from the estate under §522, individual chapter 7 debtors typically have no property that is unencumbered by a lien remaining for distribution.

In particular, many chapter 7 debtors who own houses have no equity in them because the houses are worth less than the amount outstanding on the mortgage loans they secure—that is, the loans are undersecured or "underwater." In such cases, because there is no value in the house that can be distributed to creditors with unsecured claims, the chapter 7 trustee typically will not sell the house. Rather, the trustee will

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[2] *See Colonial Sur. Co.* v. *Weizman*, 564 F.3d 526, 531 (1st Cir. 2009) ("'Most chapter 7 cases involving individual debtors are no asset cases.'" (quoting Administrative Office of the United States Courts, http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter7.aspx)); Flynn, *Chapter 7 Asset Cases and Trustee Compensation*, 33 Am. Bankr. Inst. J. 48, 48 tbl. 1 (June 2014), *available at* http://journal.abi.org/sites/default/files/2014/april/numbers.pdf (between 2006 and 2011, only 7.9% of chapter 7 cases were closed as asset cases); Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 Am. Bankr. Inst. L. Rev. 17, 68 (2012) (finding that 89.4% of chapter 7 cases filed after the 2005 Bankruptcy Code amendments were no-asset cases).

"abandon" the house to the debtor. *See* 11 U.S.C. §554(a) (providing that "the trustee may abandon any property of the estate that is burdensome ... or ... of inconsequential value"); *id.* §554(c) (property included in debtor's schedules but not administered is deemed abandoned upon closing of case). "'Property abandoned under §554 reverts to the debtor, and the debtor's rights to the property are treated as if no bankruptcy petition was filed.'" *Kane* v. *National Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008).

When the trustee abandons the debtor's house, the lender has the same rights under its lien as it had before the bankruptcy. If the debtor is in default on the mortgage loan, the lender may foreclose on the house. Alternatively, if the debtor is current on the mortgage, he or she may stay in the house and continue to pay the mortgage following the chapter 7 proceeding. That is not uncommon: A debtor who is current on his or her mortgage may nonetheless file for chapter 7 protection in order to discharge unsecured debt such as credit-card balances or medical bills, knowing that if the house is underwater it will not be sold to pay unsecured creditors.

C. Section 506 And *Dewsnup*

As noted above, the Bankruptcy Code contains special provisions dealing with secured claims. Most importantly here, §506 of the Code ("Determination of secured status") contains four distinct provisions relating to the allowance and valuation of secured claims.

Section 506(a) addresses undersecured claims—claims secured by property whose value is less than the outstanding debt. It provides:

> An allowed claim of a creditor secured by a lien on [estate] property ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim.

11 U.S.C. §506(a)(1).

In plain English, §506(a) splits an undersecured claim into two parts: a "secured claim" in the amount of the current value of the collateral and an "unsecured claim" for the remainder. That division controls the distribution a creditor can obtain from the estate. For example, a senior mortgage lender owed $150,000 on a loan secured by a house currently worth $100,000 would, for distribution purposes, have a "secured claim" for $100,000 and an "unsecured claim" for $50,000. A junior lender owed $25,000 on a loan secured by the same house would, for distribution purposes, have only an "unsecured claim" for $25,000.[3] Because secured claims are paid before unsecured claims, a creditor might recover its "secured claim" in full, but only cents on the dollar (or nothing) on its "unsecured claim."

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[3] The §506(a) valuation matters primarily in reorganization cases, in which, to confirm a plan, the debtor must pay a non-consenting secured creditor at least the value of its secured claim as determined under §506(a). *See* 11 U.S.C. §1129(b)(2)(A)(i) (chapter 11 reorganizations); *id.* §1325(a)(5)(B) (chapter 13 wage-earner plans). In no-asset chapter 7 liquidations, a §506(a) valuation is unnecessary because there will be no distribution to creditors with unsecured claims in any event, and property encumbered by a lien greater than the property's value will typically be abandoned, with the lienholder left to its state-law remedies.

Section 506(b) addresses *over*secured claims, providing that holders of such claims are entitled to interest on the claims and "reasonable fees, costs or charges" provided by the agreement or statute under which the claim arose. 11 U.S.C. §506(b).

Section 506(c) permits the trustee to recover from property securing an allowed claim "the reasonable, necessary costs and expenses" of preserving or disposing of the property for the secured creditor's benefit. 11 U.S.C. §506(c).

Finally, §506(d)—the provision at issue in *Dewsnup* v. *Timm*, 502 U.S. 410 (1992), and in this case—provides that, subject to two exceptions, "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." 11 U.S.C. §506(d).[4]

Before *Dewsnup*, some courts—including the Eleventh Circuit—had read §506(d) to provide that an undersecured creditor's lien is stripped down to the current value of the collateral securing the creditor's claim. *See, e.g.*, *Gaglia* v. *First Fed. Sav. & Loan Ass'n*, 889 F.2d 1304 (3d Cir. 1989); *In re Folendore*, 862 F.2d 1537 (11th Cir. 1989). Those courts reasoned that because §506(a) bifurcates undersecured claims into a secured

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[4] Both exceptions cover claims that are disallowed for reasons other than the claim's invalidity under applicable nonbankruptcy law. The first exception covers claims "disallowed only under section 502(b)(5) or 502(e) of this title." 11 U.S.C. §506(d)(1). (Section 502(b)(5) disallows unmatured claims for domestic support obligations. *Id.* §§502(b)(5), 523(a)(5). Section 502(e) disallows contingent claims for reimbursement or contribution by entities that are co-liable with the debtor on a creditor's claim. *Id.* §502(e).) The second exception covers any claim that is "not an allowed secured claim due only to the failure ... to file a proof of ... claim." *Id.* §506(d)(2).

and an unsecured portion based on the value of the collateral, the unsecured portion was not an "allowed secured claim" within the meaning of §506(d), and "to the extent that" a lien's value exceeded the portion of the claim treated as secured under §506(a), it was therefore void. *Gaglia*, 889 F.2d at 1306-1308; *Folendore*, 862 F.2d at 1538-1539.

In *Dewsnup*, however, this Court soundly rejected that reading of §506(d). The Court explained that under pre-Code practice, "liens pass[ed] through bankruptcy unaffected." *Dewsnup*, 502 U.S. at 417. "Apart from reorganization proceedings, ... no provision of the pre-Code statute permitted involuntary reduction of the amount of a creditor's lien for any reason other than payment on the debt." *Id.* at 418-419. "Congress must have enacted the Code with a full understanding of this practice." *Id.* at 419. Reading §506(d) against that backdrop, and finding no indication in the legislative history of the Bankruptcy Code that Congress intended such a radical change in pre-Code practice, the Court concluded that §506(d) "voids only liens corresponding to claims that have *not* been allowed." *Id.* at 415 (describing creditors' position); *see id.* at 417 (adopting that position). Where a claim has been "'allowed' pursuant to §502 of the Code and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of §506(d)," regardless of the collateral's current value. *Id.* at 415; *see id.* at 417. Put differently, the value of collateral securing a debt affects only the treatment of the creditor's *claim* against the chapter 7 estate. It does not affect the validity of the creditor's *lien*.

D. The Eleventh Circuit's Decision In *McNeal*

Dewsnup involved what in bankruptcy jargon is called a "strip down"—that is, the creditor's mortgage was only partially, not completely, underwater. Nevertheless, following *Dewsnup*, virtually every court to address the issue has concluded that *Dewsnup*'s reasoning is equally applicable to "strip offs"—cases in which a mortgage is completely underwater, typically because a senior lienholder is undersecured. *See, e.g.*, *Palomar* v. *First Am. Bank*, 722 F.3d 992 (7th Cir. 2013); *In re Talbert*, 344 F.3d 555 (6th Cir. 2003); *Ryan* v. *Homecomings Fin. Network*, 253 F.3d 778 (4th Cir. 2001).[5]

The Eleventh Circuit is the only court of appeals to have reached the opposite conclusion. In 1989, before *Dewsnup*, the Eleventh Circuit held that §506(d) voids a creditor's completely underwater junior lien. *Folendore*, 862 F.2d at 1538-1539. *Folendore* reasoned that, under §506(a), no part of such a creditor's claim is "secured" and therefore it is not an "allowed secured claim" within the meaning of §506(d). *See id.*

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[5] *See also Wachovia Mortg.* v. *Smoot*, 478 B.R. 555 (E.D.N.Y. 2012); *In re Cook*, 449 B.R. 664 (D.N.J. 2011); *In re Richins*, 469 B.R. 375 (Bankr. D. Utah 2012); *In re Bowman*, 304 B.R. 166 (Bankr. M.D. Pa. 2003); *In re Fitzmaurice*, 248 B.R. 356 (Bankr. W.D. Mo. 2000); *but see In re Lavelle*, 2009 WL 4043089 (Bankr. E.D.N.Y. Nov. 25, 2009). A handful of other lower courts outside the Eleventh Circuit initially ruled that *Dewsnup* did not apply to strip-offs, but those decisions have been overruled or reversed. *See, e.g.*, *In re Farha*, 246 B.R. 547 (Bankr. E.D. Mich. 2000), *overruled by Talbert*, 344 F.3d 555; *In re Zempel*, 244 B.R. 625 (Bankr. W.D. Ky. 1999), *overruled by Talbert*, 344 F.3d 555; *In re Yi*, 219 B.R. 394 (E.D. Va. 1998), *overruled by Ryan*, 253 F.3d 778; *In re Smoot*, 465 B.R. 730 (Bankr. E.D.N.Y. 2011), *rev'd*, 478 B.R. 555 (E.D.N.Y. 2012).

In the two decades between 1992 and 2012, lower courts within the Eleventh Circuit uniformly concluded that *Dewsnup* had repudiated *Folendore*'s reasoning, and that strip-offs were indistinguishable from strip-downs under *Dewsnup*'s logic.[6] But on May 11, 2012, in *In re McNeal*, 735 F.3d 1263, a panel of the Eleventh Circuit concluded that, notwithstanding *Dewsnup*, *Folendore* was still binding precedent until overturned by the en banc court. *Caulkett* Pet. App. 11a-13a.

The *McNeal* panel candidly acknowledged that *Dewsnup* "seems to reject the plain language analysis that we used in *Folendore*." *Caulkett* Pet. App. 12a. But, invoking the Eleventh Circuit's "'prior panel precedent rule,'" under which "'a later panel may depart from an earlier panel's decision only when the intervening Supreme Court decision is clearly on point,'" the panel concluded that it was bound by *Folendore* even after *Dewsnup*. *Id.* "Because *Dewsnup* disallowed only a 'strip down' of a partially secured mortgage lien and did not address a 'strip off' of a wholly unsecured lien, it is not 'clearly on point' with the facts in *Folendore* or with the facts at issue in this appeal." *Id.*

The mortgage servicer in *McNeal* sought en banc rehearing of the panel's decision. Over two years later, the Eleventh Circuit denied the petition for rehearing. *Caulkett* Pet. App. 15a-16a.

McNeal has had a profound impact. When it was decided in 2012, more than 20 million borrowers in the United States had outstanding second liens, totaling

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[6] *See, e.g.*, *In re Armstrong*, 2011 WL 768080, at *2-3 (M.D. Fla. Feb. 28, 2011); *In re Hoffman*, 433 B.R. 437, 440 (Bankr. M.D. Fla. 2010); *In re Woods*, 2004 WL 5848051, at *3 (Bankr. N.D. Ga. June 17, 2004); *In re Cater*, 240 B.R. 420, 423 (M.D. Ala. 1999).

over $800 billion.[7] And the financial crisis that began in 2008, bringing with it massive declines in home values, had left many of those mortgages underwater. Although the housing market subsequently took an upturn, as of the middle of 2012, the junior mortgages of approximately 4.2 million borrowers were still partially or wholly underwater.[8] As two local practitioners put it, "[t]he significance of *McNeal* can hardly be [over]stated, especially in this depressed real estate market" because "numerous properties subject to multiple mortgage liens are worth less than the amount of the first-priority mortgage."[9]

Indeed, since its issuance, *McNeal* has precipitated thousands of motions and complaints to strip off wholly underwater junior liens in bankruptcy courts in the Eleventh Circuit. Hundreds of such proceedings have been brought against Bank of America alone.

At the same time, the housing market has been rebounding, and as home values increase, underwater liens are regaining equity. Between June 2012 and June 2014, the number of U.S. borrowers with partially or wholly underwater junior mortgages was cut in half,

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[7] Lee et al., *A New Look at Second Liens*, in *Housing and the Financial Crisis* 212, 213 (Glaeser & Sinai eds. 2013) (figures as of the first quarter of 2012).

[8] CoreLogic, *CoreLogic Reports Number of Residential Properties in Negative Equity Decreases Again in Second Quarter of 2012* (Sept. 12, 2012), *available at* http://www.corelogic.com/about-us/news/corelogic-reports-number-of-residential-properties-in-negative-equity-decreases-again-in-second-quarter-of-2012.aspx.

[9] Bruce & Popowitz, *Get Busy Stripping Until The Eleventh Circuit Says Otherwise*, 2 S.D. Fla. Bankr. Bar Ass'n J. 9 (2013).

falling to 2.1 million.[10] The total number of underwater homes, including those without junior mortgages, also fell dramatically, from 10.8 million to 5.3 million.[11] And the recovery is continuing. In the second quarter of 2014 alone, about 946,000 homes regained sufficient value that they were no longer underwater.[12] Junior liens that are completely underwater at the time of a debtor's bankruptcy may thus quickly acquire significant value.

II. Proceedings Below

The two consolidated cases before this Court are two of the many proceedings to strip wholly underwater junior liens that debtors have brought against Bank of America in the Eleventh Circuit after *McNeal*.

Respondents David Caulkett and Edelmiro Toledo-Cardona have loans from Bank of America secured by second liens on their respective houses. *Caulkett* Pet. App. 5a-6a; *Toledo-Cardona* Pet. App. 2a. There has never been any dispute that Bank of America's liens are valid and enforceable under state law.

Caulkett and Toledo-Cardona filed chapter 7 petitions in the U.S. Bankruptcy Court for the Middle District of Florida in 2013. Each had two mortgages on his house, and in each case it was undisputed that the outstanding balance on the first mortgage loan exceeded the house's then-current value. Respondents filed motions to strip off Bank of America's junior liens under

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[10] CoreLogic, *Equity Report, Second Quarter 2014*, at 5 (2014), *available at* http://www.corelogic.com/research/negative-equity/corelogic-q2-2014-equity-report.pdf.

[11] *Id.* at 9.

[12] *Id.* at 3.

§506(d). *Caulkett* Pet. App. 5a-6a; *Toledo-Cardona* Pet. App. 2a.[13]

Respondents' motions were filed after the panel decision in *McNeal* but before the Eleventh Circuit had denied rehearing. Accordingly, in each case, Bank of America responded to the debtor's motion by acknowledging that, under *McNeal*, the debtor was entitled to strip off the lien, but reserving its right to seek appellate review. In each case, the bankruptcy court granted the debtor's motion and ordered that Bank of America's second lien would be void upon the debtor's receipt of a chapter 7 discharge. *Caulkett* Pet. App. 5a-6a; *Toledo-Cardona* Pet. App. 7a-8a. In each case, the debtor received a chapter 7 discharge. *Caulkett*, No. 13-5537, Dkt. 15 (Bankr. M.D. Fla. Aug. 16, 2013); *Toledo-Cardona*, No. 13-5393, Dkt. 15 (Bankr. M.D. Fla. July 30, 2013).

Bank of America appealed both rulings to the district court, where—in light of *McNeal*—the Bank filed motions for summary affirmance, again expressly reserving its right to seek further appellate review. In each case, the district court entered an order summarily affirming the bankruptcy court. *Caulkett* Pet. App. 3a; *Toledo-Cardona* Pet. App. 5a. Bank of America timely appealed both of the district court orders to the court of appeals.

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[13] Caulkett's motion asserted that his house was worth $98,000 and that the amounts outstanding on the first and second mortgages were $183,264 and $47,855, respectively. *Caulkett*, No. 13-5537, Dkt. 26 (Bankr. M.D. Fla. Sept. 24, 2013). Toledo-Cardona's motion asserted that his house was worth $77,689 and that the amounts outstanding on the first and second mortgages were $135,703 and $32,000, respectively. *Toledo-Cardona*, No. 13-5393, Dkt. 8 (Bankr. M.D. Fla. June 7, 2013).

On appeal, Bank of America filed briefs setting out its arguments that *Folendore* and *McNeal* were wrongly decided, while acknowledging that the panels were bound by those decisions and reserving its right to seek rehearing en banc or certiorari. In *Toledo-Cardona*, Bank of America also requested that the en banc court hear the matter in the first instance. On May 15, 2014, the court denied that request and issued a brief per curiam decision in *Toledo-Cardona* holding that it was "bound as a panel to follow our Court's decision in *McNeal*." *Toledo-Cardona* Pet. App. 3a; Order, No. 13-15855 (11th Cir. May 15, 2014).

On May 20, 2014, the Eleventh Circuit declined to rehear *McNeal* en banc. *Caulkett* Pet. App. 15a. The next day, a panel of the Eleventh Circuit issued a brief per curiam decision in *Caulkett* holding that, under *McNeal*, "a wholly unsecured junior lien—such as the one held here by Bank of America—is voidable under section 506(d)." *Id.* 2a.

Bank of America sought certiorari in both cases, and on November 17, 2014, this Court granted certiorari and consolidated the two cases for briefing and argument.

SUMMARY OF ARGUMENT

I. *Dewsnup* does not permit the strip-off of wholly underwater junior liens. *Dewsnup* held, in a nutshell, that §506(d) strips only liens securing *disallowed* claims—essentially, claims that are invalid under nonbankruptcy law. Where a claim "has been 'allowed' ... and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of §506(d)." *Dewsnup* v. *Timm*, 502 U.S. 410, 415 (1992); *see id.* at 417. That analysis applies with equal force to *any*

lien—whether it is junior or senior or partially or wholly underwater. Bank of America's junior mortgage loans are valid claims and are secured by liens with recourse to the underlying collateral. Accordingly, §506(d) provides no basis for stripping the liens. Likewise, the pre-Code practice on which *Dewsnup* relied to prohibit the strip-down of partially underwater senior liens is just as compelling in the case of wholly underwater junior liens.

II. Moreover, there is no reason for this Court to revisit *Dewsnup*—and good reason it should not do so. *Dewsnup* was correctly decided. As an initial matter, the context and structure of §506 itself—along with its drafting and legislative history—make clear that it is primarily directed to the treatment of secured *claims*, not to the treatment of *liens*. Section 506(d) invalidates liens securing disallowed, invalid claims simply in order to ensure that the disallowance has full effect outside bankruptcy. Moreover, the Bankruptcy Code addresses lien-stripping elsewhere, in several carefully tailored provisions permitting lien-stripping only in certain circumstances. If §506(d) automatically stripped down all liens, not only would those provisions be superfluous, but the limitations they impose on lien-stripping would be eviscerated. Such a reading would make a hash of the Bankruptcy Code's overall design.

In any event, in the twenty years since *Dewsnup* was decided, Congress has acquiesced in its holding. Twice since 1992, Congress has renovated the Bankruptcy Code from top to bottom without touching §506(d) or giving any sign that it disagreed with *Dewsnup*'s holding. Indeed, in 2005 Congress amended §506 itself without doing so. Moreover, Congress has considered and rejected many proposals to expand debtors' ability to strip liens. Finally, during that time,

millions of mortgage loans have been made based on *Dewsnup*'s holding that liens pass through chapter 7 bankruptcy unaffected. Those reliance interests counsel strongly in favor of respecting *stare decisis* here.

ARGUMENT

I. *DEWSNUP* CONTROLS THIS CASE

The Eleventh Circuit's decision cannot be reconciled with this Court's holding and reasoning in *Dewsnup*. *Dewsnup* permits no legal or logical distinction between a partially underwater senior mortgage lien and a wholly underwater junior mortgage lien. Neither can be stripped under §506(d).

A. *Dewsnup* Held That §506(d) Strips Only Liens Securing Disallowed Claims

Dewsnup arose from the debtors' attempt to strip down a partially underwater mortgage lien on their land. The respondent had lent the Dewsnups $119,000, secured by two parcels of Utah farmland. *Dewsnup* v. *Timm*, 502 U.S. 410, 412 (1992). The next year, the Dewsnups defaulted on the loan; before the lender could foreclose, they filed for bankruptcy. *Id.* at 412-413. In their chapter 7 case, the Dewsnups contended that the lien securing the debt should be stripped down to the value of the land—at the time, $39,000. *Id.* at 413. They argued that, under §506(a), the lender's "secured claim" was limited to $39,000; that the remainder of the claim was not an "allowed secured claim" for purposes of §506(d); and that the portion of the lien exceeding $39,000 was therefore void. *Id.* at 413-414.

This Court categorically rejected that reading of the statute. It held that the words "'allowed secured claim' in §506(d) need not be read as an indivisible term

of art defined by reference to §506(a)." *Dewsnup*, 502 U.S. at 415 (describing respondents' position); *id.* at 417 (adopting that position). "Rather, the words should be read term-by-term to refer to any claim that is, first, allowed, and, second, secured." *Id.* at 415; *see id.* at 417. Where a claim "has been 'allowed' ... and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of §506(d)." *Id.* at 415; *see id.* at 417. That construction gives §506(d) "the simple and sensible function of voiding a lien whenever a claim secured by the lien itself has not been allowed" and "ensures that the Code's determination not to allow the underlying claim against the debtor personally is given full effect by preventing its assertion against the debtor's property." *Id.* at 415-416; *see id.* at 417.

The "practical effect" of the debtors' approach, the Court noted, would be "to freeze the creditor's secured interest at the judicially determined valuation," depriving the creditor of "the benefit of any increase in the value of the property by the time of the foreclosure sale" and providing the debtor a potential "windfall." *Dewsnup*, 502 U.S. at 417. That result would be contrary to the basic "bargain[]" of a mortgage: "[T]he creditor's lien stays with the real property until the foreclosure" or payment in full, and any appreciation in the property's value "rightly accrues to the benefit of the creditor" in the event of foreclosure. *Id.*

The Court also explained that the debtors' reading of the statute would represent a radical departure from pre-Code practice, under which "liens pass[ed] through bankruptcy unaffected." *Dewsnup*, 502 U.S. at 417. "Apart from reorganization proceedings," the Court stated, "no provision of the pre-Code statute permitted involuntary reduction of the amount of a creditor's lien for any reason other than payment on the debt." *Id.* at

418-419. In fact, the Bankruptcy Act of 1898 expressly provided that "[l]iens given or accepted in good faith and not in contemplation of or in fraud upon this Act ... shall not be affected by this Act." Act of July 1, 1898, ch. 541, §67d, 30 Stat. 544, 564.[14]

As *Dewsnup* noted, *see* 502 U.S. at 419, past decisions of this Court also embodied this long-standing principle. As far back as the Bankruptcy Act of 1867, it was clear that "the discharge of [a debtor] in bankruptcy did not release the lien of [a] mortgage." *Long* v. *Bullard*, 117 U.S. 617, 619-621 (1886). Rather, the "right of the mortgagee to insist upon full payment before giving up his security has been deemed of the essence of a mortgage" throughout the history of bankruptcy law. *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555, 580 (1935); *see also Farrey* v. *Sanderfoot*, 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive bankruptcy.").

Indeed, before *Dewsnup* the Court had recognized that liens are property interests with a constitutional dimension: "[O]ur cases recognize, as did the common law, that the contractual right of a secured creditor to obtain repayment of his debt may be quite different in legal contemplation from the property right of the same creditor in the collateral." *United States* v. *Security Indus. Bank*, 459 U.S. 70, 75 (1982) (construing Bankruptcy Code not to modify liens retroactively due to

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[14] Although that specific language was removed by the Chandler Act of 1938, this Court explained that "this was done not to remove the rule of validity [of liens] but because 'the draftsmen of the 1938 Act desired generally to specify only what should be *invalid*.'" *Dewsnup*, 502 U.S. at 418 n.4 (quoting 4B *Collier on Bankruptcy* ¶70.70 (14th ed. 1978)). "The alteration had no substantive effect." *Id.*

constitutional concerns); *see also Radford*, 295 U.S. at 601 (invalidating under the Takings Clause an amendment to the 1898 Act that would have allowed a debtor to redeem mortgaged real property by paying the lender the appraised value of the property—essentially, to strip down the lien to the value of the collateral).

Dewsnup observed that "Congress must have enacted the Code with a full understanding of th[e] practice" that liens passed through liquidation proceedings in bankruptcy unaffected. 502 U.S. at 419. And it noted that the Court had historically been "reluctant to accept [an] argument[] that would interpret the Code ... to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history." *Id.* There being no indication that Congress intended the Code to work such a radical alteration to "basic bankruptcy principles," the Court concluded that it was "not plausible" to read §506(d) to reduce liens to the value of the collateral. *Id.* at 420.

B. This Case Is Indistinguishable From *Dewsnup*

Although *Dewsnup* arose in the context of a partially—rather than wholly—underwater lien, its rationale applies equally to both. The heart of *Dewsnup*'s reasoning was that §506(d) applies only when "a *claim* secured by the lien ... has not been *allowed*"—that is, where the underlying debt is invalid under applicable law. 502 U.S. at 416 (emphasis added); *see id.* at 417. Where a claim "has been 'allowed' ... and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of §506(d)." *Id.* at 415; *see id.* at 417. That is, although §506(a) limits a creditor's secured *claim* for distribution purposes to the current value of its collateral, §506(d) has no such effect on the

creditor's *lien*. Consistent with long-established practice, the lien rides through the bankruptcy and, in the event of default, can be asserted against the collateral if the collateral later increases in value. *Id.* at 417.

As every court of appeals to address the question other than the Eleventh Circuit has concluded, that reasoning also applies to wholly underwater liens. *See Palomar* v. *First Am. Bank*, 722 F.3d 992, 994 (7th Cir. 2013) (Posner, J.) ("*Dewsnup* ... holds that section 506(d) does not allow the bankruptcy court to squeeze down a fully valid lien to the current value of the property to which it's attached. ... That's the relief the debtor in this case is seeking. The only difference between this case and *Dewsnup* is that our debtors want to reduce the value of the lien to zero."); *In re Talbert*, 344 F.3d 555, 560 (6th Cir. 2003) ("The Supreme Court's reasoning for not permitting 'strip downs' in the Chapter 7 context applies with equal validity to a debtor's attempt to effectuate a Chapter 7 'strip off.'"); *Ryan* v. *Homecomings Fin. Network*, 253 F.3d 778, 782 (4th Cir. 2001) ("The Court's reasoning in *Dewsnup* is equally relevant and convincing in a case like ours where a debtor attempts to strip off, rather than merely strip down" a wholly underwater lien securing an allowed claim.).

1. As a textual matter, *Dewsnup*'s construction of §506(d) admits of no distinction between partially and wholly underwater liens. *Dewsnup* read the phrase "allowed secured claim" in §506(d) to use the word "secured" in its ordinary, plain-English sense, in which a debt is "secured" if it is "secured by a lien with recourse to the underlying collateral." 502 U.S. at 415; *see id.* at 417. It expressly rejected the debtors' theory, under which the phrase "allowed secured claim" in §506(d) referred only to the portion of such a claim that

is deemed "secured" under §506(a) for purposes of distribution in the bankruptcy case. *See id.* at 414-415, 417.

Here, like the creditor in *Dewsnup*, Bank of America has allowed claims that are "secured by ... lien[s] with recourse to the underlying collateral." 502 U.S. at 415. Bank of America's junior liens give it the right, in the event of default, to foreclose on the debtors' houses. To be sure, because the present value of the collateral is less than the amount outstanding on the senior mortgages, if the houses were sold today, Bank of America would obtain no recovery. But the Bank's liens are nonetheless real and valuable property interests. Outside bankruptcy, if the houses' value had increased so that the junior mortgages were no longer completely underwater, and the debtors had then defaulted, the Bank could have foreclosed and recovered part or all of the debt owed to it. "That is what was bargained for by the mortgagor and the mortgagee," and *Dewsnup* held that bankruptcy does not alter that bargain. *Id.* at 417. Under *Dewsnup*'s logic, the Bank's valid liens are sufficient to render its valid claims "allowed secured claim[s]" for purposes of §506(d).

In their briefs in opposition, respondents contended that the mortgage in *Dewsnup* "qualified as 'an allowed secured claim'" only because its collateral retained some value at the time of bankruptcy. *E.g.*, *Caulkett* Opp. 13. As shown above, that is wrong. For purposes of §506(d), "an allowed secured claim" is an allowed claim "secured by a lien with recourse to the underlying collateral," regardless of the collateral's value. *Dewsnup*, 502 U.S. at 415; *see id.* at 417. *Dewsnup* made clear that the value of the collateral is relevant only to the treatment of the creditor's *claim* under §506(a): To the extent that the creditor's claim exceeds

the value of the collateral, the claim is "unsecured" for distribution purposes. *Id.* at 414-415, 417. The collateral's value has no effect on the treatment of the creditor's *lien* under §506(d)—and that is logically true regardless of whether the lien is first-, second-, or third-priority and regardless of the extent to which it is underwater.

Indeed, a contrary reading would produce an absurd result: If the bankruptcy court valued a house (or any other property) at one dollar more than the amount of a senior lien, the debtor could not strip down a junior lien at all, but if the court valued the property at one dollar less than the amount of the senior lien, the debtor could strip off the entire junior lien. That result would be particularly anomalous in light of the constantly shifting value of real property—and many other kinds of property subject to liens—and the Bankruptcy Code's general aversion to reliance on judicial valuation. *See, e.g., Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999) ("[T]he best way to determine value is exposure to a market. ... [I]t was ... one of the Code's innovations to narrow the occasions for courts to make valuation judgments.").

2. Moreover, *Dewsnup* interpreted §506 not in isolation, but in light of a fundamental bankruptcy principle that has persisted for well over a century: At least in liquidation proceedings like those here, "liens pass through bankruptcy unaffected." 502 U.S. at 417. That principle is as relevant to a wholly underwater junior lien as to a partially underwater senior lien. *See, e.g., Ryan*, 253 F.3d at 783 (the point "'that liens pass through bankruptcy unaffected'" is "'equally pertinent'" to wholly underwater liens). In either case, "the creditor's lien stays with the real property until the foreclo-

sure" because that is the "bargain[]" of secured credit. *Dewsnup*, 502 U.S. at 417; *see also Ryan*, 253 F.3d at 783.

In other words, although the difference in priority affects the lienholders' rights vis-à-vis one another, it does not alter the lienholders' basic rights against the debtor or the debtor's property. While a senior lienholder has first claim on the proceeds of its collateral, a junior lienholder also has rights to the collateral that are superior to those of unsecured creditors or the debtor, and that are not extinguished until foreclosure or payment in full.

Respondents' assertion in their briefs in opposition that there is no equivalent pre-Code practice of junior liens passing through bankruptcy unaffected (*e.g.*, *Caulkett* Opp. 18-19) is thus wrong. As respondents concede (*id.*), junior liens existed before 1978. And the 1898 Act treated them in precisely the same way as senior liens.

Under the 1898 Act, a "secured creditor" was defined simply as a creditor that had "security for [its] debt upon the property of the bankrupt." 1898 Act, §1(23), 30 Stat. at 545. A secured creditor could choose to "stay[] aloof from the bankruptcy proceeding." *Dewsnup*, 502 U.S. at 417. In that event, the creditor would not receive a distribution from the bankruptcy estate, but could still exercise its rights against the debtor's property under its lien following the bankruptcy. *See* 2 *Remington on Bankruptcy* §735 (1956); *see also Long*, 117 U.S. at 620-621. Alternatively, it could file a claim that would permit it to "avail [it]self of [its] security and share in the general assets as to the unsecured balance." *United States Nat'l Bank of Johnstown* v. *Chase Nat'l Bank of N.Y.C.*, 331 U.S. 28, 34

(1947); *see* 1898 Act, §57e, 30 Stat. at 560. That is, an undersecured creditor would have an "unsecured" claim for the amount of the debt in excess of the value of its security interest—just as such a creditor does today. And such a creditor did not lose its lien or have the lien stripped down; rather, valid liens were "not ... affected by th[e] Act." 1898 Act, §67d, 30 Stat. at 564; *Dewsnup*, 502 U.S. at 417-418 & n.4.[15]

As the Act's language makes plain, a lienholder's priority was irrelevant under this statutory scheme. Just like any other undersecured creditor, an underwater junior lienholder could elect to file a claim against the estate for the "unsecured balance" of the debt while retaining its lien. And that makes sense, because the principle underlying the treatment of secured creditors in both the Act and the Code is a principle relating to liens *generally*, and stemming from their recognized status as property rights in the collateral itself.

II. *DEWSNUP*'S STATUTORY HOLDING IS BOTH CORRECT AND SETTLED

This Court need go no further to resolve this case. Should respondent or its amici urge the Court to revisit its analysis in *Dewsnup*, however, it should decline to do so. *Dewsnup* was correctly decided as an original matter, as pre-Code practice and the overarching

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[15] The practice of permitting a secured creditor to participate in distributions from the estate to the extent its claim exceeded the value of its security interest was sometimes called the "bankruptcy rule." *See generally United States Nat'l Bank*, 331 U.S. at 34; Brubaker, *Lien Voiding or Lien Pass-Through Upon Confirmation of a Chapter 11 Plan? (Part I)*, 33 Bankr. L. Letter 12, at 4 (Dec. 2013) (explaining that "th[e] 'bankruptcy rule' has been expressly codified since the Bankruptcy Act of 1867 and is currently reflected in Bankruptcy Code §506(a)(1)").

structure of the Code demonstrate. Moreover, in the two decades since *Dewsnup* was decided, Congress has repeatedly acquiesced in its holding by amending the Code—and §506 in particular—without changing the relevant language of §506(d). Statutory *stare decisis* is thus at its apex here.

A. The Structure Of The Bankruptcy Code Precludes Reading §506(d) To Strip Liens Securing Allowed Claims

Dewsnup observed that, taken in isolation, the language of §506(d) contains "ambiguity." 502 U.S. at 417. The words "secured claim" in the phrase "allowed secured claim" could refer to the portion of a claim that is treated as "secured" for purposes of distribution under §506(a), or they could carry their ordinary English meaning of a claim secured by recourse to collateral. For the reasons given in *Dewsnup* and for the additional reasons below, however, any ambiguity is resolved when §506(d) is read in light of pre-Code practice governing the treatment of secured creditors and the overall architecture of the Bankruptcy Code. As this Court has recognized, interpretation of the Code is "a holistic endeavor," and a phrase that seems "ambiguous in isolation" may become clear if "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988). That is the case here.

As *Dewsnup* and other decisions of this Court have recognized, and as discussed above, before the enactment of the Bankruptcy Code it was settled law that liens passed through liquidation proceedings unaffected, regardless of the value of the collateral securing them. *Dewsnup*, 502 U.S. at 418; *Radford*, 295 U.S. at

579; *Long*, 117 U.S. at 620-621. And, as this Court has also repeatedly recognized, the Bankruptcy Code should not be read to depart from established pre-Code practice absent a clear indication Congress intended that result. *See, e.g.*, *Dewsnup*, 502 U.S. at 419-420; *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envt'l Prot.*, 474 U.S. 494, 500-501 (1986). That is simply common sense: Although the Code did change pre-Code practice in some respects, by and large it was intended to modernize a somewhat antiquated bankruptcy statute, not to abrogate it. "'[A]bsent a clear indication that Congress intended such a departure,'" the Code should thus not be read "'to erode past bankruptcy practice'"—particularly when that practice is as clear, well-established, and basic to bankruptcy law as it is here. *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998).

Likewise, the Code should not be read to abrogate state-law property rights absent a "'clear and manifest'" contrary intention. *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 543-545 (1994). That presumption stems not only from federalism principles, but also from the nature of bankruptcy itself: Bankruptcy alters state-law rights only when necessary to achieve a bankruptcy objective. *Butner* v. *United States*, 440 U.S. 48, 54, 55 (1979) ("Unless some federal interest requires a different result," "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law," and that principle "appl[ies] with equal force to security interests.").

The Bankruptcy Code shows no such clear intention to strip lienholders of their basic state-law property rights. To the contrary, the overall structure of the Code, together with its drafting and legislative history, demonstrate that the Code is carefully designed to preserve those rights, with certain narrowly cabined ex-

ceptions, principally in reorganization cases. *First*, the context and structure of §506 itself make plain that §506(d) addresses only liens securing *disallowed* claims. *Second*, the Bankruptcy Code contains several other specific provisions that do permit debtors to reduce the value of liens securing valid claims to the current value of the collateral in limited and carefully delineated circumstances. Those provisions would be rendered superfluous if §506(d) were an all-purpose lien-stripping tool.

1. The role that §506 plays in the Bankruptcy Code as a whole, and a review of each of its four subsections—together with the provision's drafting and legislative history—confirm *Dewsnup*'s reading of §506(d).

The provisions of chapter 5 of the Bankruptcy Code apply to all bankruptcy cases, including chapter 7 liquidations, chapter 11 reorganizations, and chapter 13 wage-earner plans (which can be thought of as a type of reorganization for an individual consumer debtor). Subchapter I ("Creditors and Claims"), in which §506 is located, sets out the basic rules governing claims against the estate—their filing, their allowance or disallowance, and their various priorities for distribution purposes.

Unsurprisingly, then, §506 focuses on the treatment of secured *claims*, once those claims have been either allowed or disallowed under §502. As discussed above, it contains four distinct provisions. Section 506(a) splits the allowed claims of undersecured creditors into a secured portion and an unsecured portion. This bifurcation determines the treatment a claim receives: Absent the creditor's consent, "secured claims" under §506(a) must be paid in full, while "unsecured claims" receive only a pro rata share of assets remain-

ing after payment of secured claims. *See* 11 U.S.C. §§1129, 1325. Section 506(b) addresses allowed claims of *over*secured creditors, and §506(c) permits the trustee to recover certain expenses of maintaining collateral securing an allowed claim. Finally, §506(d) addresses what happens if a secured creditor's claim is *disallowed*: In that event, because the underlying debt has been determined to be invalid, the lien securing the debt is voided as well. That ensures that the bankruptcy court's order disallowing the claim cannot be evaded by the creditor's attempting to enforce its lien after the bankruptcy.

The drafting history of §506(d) confirms that interpretation. As originally introduced and enacted, §506(d) provided:

> To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless (1) a party in interest has not requested that the court determine and allow or disallow such claim under section 502 of this title; or (2) such claim was disallowed only under section 502(e) of this title.

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §506(d), 92 Stat. 2549, 2583. The original language of §506(d)(1) made clear that a lien was not voided unless a party in interest had objected to the underlying claim and the court had affirmatively disallowed it. *See* 11 U.S.C. §502(a) ("A claim ... is deemed allowed, unless a party in interest ... objects."); *id.* §502(b) ("if such objection to a claim is made, the court ... shall allow such claim" unless, among other exceptions, "such claim is unenforceable ... under any agreement or applicable law"). If no party in interest had objected to the claim, the lien could not be voided. Thus, a lien securing an

allowed claim could not be voided based on the value of the collateral.[16]

Indeed, the Committee Report accompanying the Code stated unambiguously that "[s]ubsection (d) *permits liens to pass through the bankruptcy case unaffected.*" H.R. Rep. No. 95-595, at 357 (1978) (emphasis added). "However[,] if a party in interest requests the court to determine and allow or disallow the claim secured by the lien under section 502 and the claim is not allowed, then the lien is void to the extent that the claim is not allowed." *Id.*; *see also* S. Rep. No. 95-989, at 68 (1978) ("Subsection (d) provides that to the extent a secured claim is not allowed, its lien is void[.]"). Again, it is clear that the value of the collateral has no role to play in this process—all that matters is whether the claim has been disallowed.[17]

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[16] In 1984, Congress amended the exceptions to §506(d), but did nothing to suggest that it was changing the basic purpose of §506(d) to void liens securing *disallowed* claims. Section 506(d)(1) was replaced by §506(d)(2), which creates an exception for any claim that "is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501." Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, §448, 98 Stat. 333, 374. The amendment was intended to "make clear that the failure of the secured creditor to file a proof of claim is not a basis for avoiding the lien of the secured creditor." S. Rep. No. 98-65, at 79 (1983). This "[t]echnical and [c]larifying" change, *id.* at 52, ensured that §506(d) voided only liens securing claims affirmatively disallowed because they were substantively invalid, not claims that were not allowed due to a procedural misstep. *See supra* n.4.

[17] That point is reinforced by §522(c) and its legislative history. That section provides, among other things, that a creditor with a debt secured by a lien that is not void under §506(d) (or under the preference and fraudulent transfer provisions of the Code) may enforce its lien after bankruptcy even if the lien is on exempt

2. The overall structure of the Bankruptcy Code also compels this interpretation of §506(d). The Code contains several different provisions that *do* permit debtors to strip down liens to the current value of the collateral. But the Code permits that result only in specific and limited circumstances. Those carefully reticulated provisions cannot be reconciled with a reading of §506(d) that would strip *all* liens down to the value of the collateral. Two provisions of the Code, in different chapters, illustrate the point.

a. Section 722 provides that an individual chapter 7 debtor may "redeem" exempt or abandoned "tangible personal property intended primarily for personal, family, or household use" from a lien securing a dischargeable consumer debt by paying the lienholder the full amount of its allowed secured claim. 11 U.S.C. §722. For example, a chapter 7 debtor might own a car for his personal or family use. Under §522(d)(2) of the Code, the debtor may be able to exempt his interest in the car from the bankruptcy estate. But exempting property from the estate does not invalidate a lien on that property. *See supra* n.17. Section 722 provides an exception to that general rule. If the debtor took out a secured loan to buy the car, and the outstanding amount

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property. 1978 Act, §522(c)(2), 92 Stat. at 2587 (codified at 11 U.S.C. §522(c)(2)). The House and Senate Reports explained that §522(c) codified the rule that the "bankruptcy discharge will not prevent enforcement of valid liens," stating that "[t]he rule of *Long* v. *Bullard*"—under which liens pass through bankruptcy unaffected—"is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property." H.R. Rep. No. 95-595, at 361 (also citing *Radford*, 295 U.S. at 583); *accord* S. Rep. No. 95-989, at 76. Congress thus not only recognized that existing law did not affect the liens of undersecured creditors with allowed claims, but also understood the Code to embody—not abrogate—that rule.

of the loan is now more than the car is worth, under §722 the debtor can pay the lender the car's value—which is the amount of the lender's "secured claim" under §502(a)—and "redeem" the car. The debtor will then own the car free of the lender's lien. *See* 6 *Collier on Bankruptcy* ¶¶722.01-722.05 (16th ed. 2014).

In other words, in those very narrow circumstances, a chapter 7 debtor may strip down the secured creditor's lien to the value of its collateral as determined under §506(a). If §506(d) automatically stripped down liens to the current value of the collateral, debtors could redeem any property encumbered by a lien by paying that value, and §722 would be superfluous. *See, e.g.*, *Hibbs* v. *Winn*, 542 U.S. 88, 101 (2004) ("'A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'").[18]

Indeed, the incongruity created by the juxtaposition of §722 with a lien-stripping interpretation of §506(d) goes beyond the mere creation of surplusage. Section 722's scope is so narrow and carefully defined

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[18] The dissenters in *Dewsnup* argued that debtors' interpretation of §506(d) created no superfluity because "§506(d) is not a *redemption* provision." 502 U.S. at 428 (Scalia, J., dissenting). "It reduces the value of a lienholder's equitable interest in a debtor's property to the property's liquidation value, but it does not insure the debtor an opportunity to 'redeem' the property at that price." *Id.* But while it is true that §506(d) does not use the word "redeem," its substantive effect, under the *Dewsnup* debtors' interpretation, would nonetheless be to permit the debtor to redeem any property encumbered by a lien securing a dischargeable debt by paying the creditor the current value of the property. If the debtor's personal liability for the debt is discharged, and the creditor's lien is reduced to the property's current value, once the debtor pays the property's current value, the creditor has no further recourse, and the property is effectively "redeemed."

that it disproves any notion that the Code was designed broadly to strip away lienholders' rights under existing law. *Cf. RadLAX Gateway Hotel LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (refusing to adopt construction of chapter 11 provision that would override creditor protections in other provisions and noting that "'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions'"); *United States* v. *Nordic Village Inc.*, 503 U.S. 30, 35 (1992) (adopting construction of §106(c) of the Bankruptcy Code, regarding the scope of waiver of federal sovereign immunity, that "avoids eclipsing the carefully drawn limitations" on waiver set forth in other provisions).

The House and Senate Reports noted that even the modest redemption right given individual debtors under §722 was "a very substantial change" from existing law, S. Rep. No. 95-989, at 95. Ordinarily, a debtor in such a situation would "pay more than the property is worth for the privilege of continuing to use the property.'" H.R. Rep. No. 95-595, at 128. The limited redemption right for exempt or abandoned consumer goods—a type of collateral that, unlike real property, will generally only depreciate in value—was included to ensure that "a debtor that goes through bankruptcy comes out with adequate possessions to begin his fresh start." *Id.* at 126; *see also id.* at 127-128. The obvious corollary is that the Code does not give the debtor the right effectively to redeem *other* kinds of property, still less all property worth less than the creditor's claim—which would be a far more significant change in the law than the "very substantial change" made by §722.[19]

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[19] Indeed, Congress expressly considered whether to permit a debtor to redeem *any* exempt or abandoned property "from a lien

b. The reorganization chapters of the Code also contain specific provisions governing the treatment of liens that are incompatible with a reading of §506(d) as stripping down all liens to the current value of the collateral.

For instance, except in the case of liens on principal residences, chapter 13 permits a plan to strip down an undersecured creditor's lien to the value of the collateral in certain circumstances. Specifically, a chapter 13 plan may be confirmed over a secured creditor's dissent (or, in bankruptcy jargon, "crammed down") if (1) the creditor will receive under the plan "not less than the allowed amount of [its secured] claim" and (2) the creditor retains its lien until (a) full payment of the underlying debt (not merely the portion that is "secured" under §506(a)) or (b) discharge. 11 U.S.C. §1325(a)(5)(B).

For example, a chapter 13 debtor may own a second home or investment property that is worth less than the outstanding amount of the mortgage on that property—perhaps the property is worth $30,000 but the mortgage is $50,000. Assuming the other requirements of chapter 13 are met, the plan can satisfy the lender's claim by paying it $30,000. But the plan must also provide that the lender retains its lien until either the lender is paid the full $50,000 it is owed, or the debtor successfully completes the plan and obtains a chapter 13 discharge (which, in many cases, does not occur). If the debtor receives a discharge, the lender's lien is effectively stripped down to the $30,000 judicial valuation of the collateral.

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securing a dischargeable debt" and declined to do so. *Compare* H.R. 32, §4-504, 94th Cong. (1974); S. 235, §4-504, 94th Cong. (1974), *with* 1978 Act, §722, 92 Stat. at 2606 (codified at 11 U.S.C. §722).

If §506(d) automatically stripped an undersecured lender's lien down to the value of the collateral, the specific provisions of §1325(a)(5)(B) would, once again, be not only superfluous but entirely incongruous. For one thing, §1325(a)(5)(B)'s requirement that the lender retain its lien until full payment of the debt or discharge would be senseless. Continuing the example above, if the lender's lien is automatically stripped down to $30,000, retention of the lien until the $50,000 debt is paid in full would serve no purpose.

Moreover, as noted above, a chapter 13 plan may not "modify the rights of holders" of "claim[s] secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. §1322(b)(2); *see Nobelman* v. *American Sav. Bank*, 508 U.S. 324, 327-331 (1993). Mortgages on principal residences are thus exempt from chapter 13's cram-down provisions. If §506(d) automatically stripped down all liens, this exception would be pointless.[20]

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In short, as the leading treatise on bankruptcy explains, "it would make no sense to conclude that, while a [debtor] is expressly authorized to adjust the lien rights of a secured creditor under" provisions like §722 and §1325(a)(5), "that authority is ... duplicated in sec-

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[20] Chapter 11's cram-down provisions likewise permit a plan that essentially strips a secured creditor's lien to the value of its collateral, *see* 11 U.S.C. §1129(b)(2)(A)(i), as long as the creditor does not elect to have its entire claim treated as secured, *see id.* §1111(b). As in chapter 13, however, chapter 11's cram-down provisions give the secured creditor certain protections, such as the requirement that the plan be "fair and equitable" overall, *id.* §1129(b)(1), that would be nullified if §506(d) itself could automatically accomplish the same result even in the absence of a plan.

tion 506(d) but without the limitations contained in" the specific provisions governing treatment of liens. 4 *Collier on Bankruptcy* ¶506.06[1][c]. "The better view is that section 506(d) does not authorize lien stripping" because "the ability to adjust the lien rights of secured creditors is provided for elsewhere." *Id.* Indeed, the overall structure and history of the Bankruptcy Code make clear that—consistent with settled pre-Code law—the Code preserves lienholders' state-law rights except where they are expressly limited, and that, subject only to very narrow exceptions, liens pass through chapter 7 unaffected.

B. Congress Has Acquiesced In *Dewsnup*'s Reading Of §506(d)

In the over twenty years since *Dewsnup* was decided, Congress has repeatedly amended the Bankruptcy Code—and §506 itself—without ever suggesting disapproval of *Dewsnup*'s holding. Congress has thus acquiesced in *Dewsnup*'s reading of §506(d).

That acquiescence "'enhance[s] even the usual precedential force'" this Court accords its interpretations of statutes. *Watson* v. *United States*, 552 U.S. 74, 82-83 (2007). As this Court has explained, *stare decisis* applies with "special force in the area of statutory interpretation" because such decisions implicate "the legislative power" and "Congress remains free to alter what [the Court has] done." *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172-173 (1989); *accord, e.g.*, *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2411 (2014); *Michigan* v. *Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). Where Congress declines to take such action, the Court's construction of a federal statute effectively becomes a part of the statutory scheme, and subsequent efforts to alter or repeal that

interpretation should be directed to Congress, not to the Court. *See Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 739 (2002).

Those principles are particularly compelling in this case. Congress has amended the Bankruptcy Code many times since 1992, including major overhauls in 1994 and 2005, but has never modified §506(d) in response to *Dewsnup*'s interpretation. *See Ankenbrandt* v. *Richards*, 504 U.S. 689, 700-701 (1992) (giving particular weight to congressional inaction following a judicial statutory interpretation "where Congress made substantive changes to the statute in other respects").

The Bankruptcy Reform Act of 1994 made over fifty substantive amendments to the Bankruptcy Code, but took no action to overturn or modify *Dewsnup*. Pub. L. No. 103-394, 108 Stat. 4106. That was not because of any reluctance to overturn this Court's interpretations of the Code, including interpretations favorable to secured creditors: The same bill "overrul[ed]" this Court's decision in *Rake* v. *Wade*, 508 U.S. 464 (1993), which had held that oversecured creditors were entitled to interest on home-mortgage arrearages under a chapter 13 plan notwithstanding the terms of the underlying agreement. H.R. Rep. No. 103-835, at 55 (1994); 1994 Act, §305, 108 Stat. at 4134. Indeed, the House Report identified dozens of judicial decisions that the 1994 Act was intended to modify or overrule. *See, e.g.*, H.R. Rep. No. 103-835, at 42, 45, 47, 48, 52, 57, 58. Had Congress felt any similar dissatisfaction with the Court's holding in *Dewsnup*, the 1994 Act would have been an obvious opportunity to correct it.

Similarly, in 2005 Congress enacted a major set of reforms to the Bankruptcy Code, including over 150 substantive amendments. *See* Bankruptcy Abuse Pre-

vention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23. Notably, BAPCPA amended §506 itself without taking any action to supersede or modify *Dewsnup*'s holding. Specifically, Congress amended §506(a) to provide that, in an individual chapter 7 or 13 case, personal property subject to a lien must be valued by reference to "the replacement value of such property." BAPCPA, §327, 119 Stat. at 99-100.[21] BAPCPA also added an exemption from §506 in chapter 13 for consumer debts secured by purchase-money security interests incurred within a certain period prior to bankruptcy, effectively allowing such creditors' entire claims to be treated as secured. BAPCPA, §306(b), 119 Stat. at 80 (codified at 11 U.S.C. §1325(a) (hanging paragraph)). Congress thus had the opportunity to—and did—consider and amend §506, while doing nothing to change *Dewsnup*'s interpretation of §506(d). Particularly in a context in which Congress has proven willing and able to alter judicial interpretations of the Code of which it disapproves,[22] Congress's failure to take such action here

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[21] The amendment responded to this Court's holding in *Associates Commercial Corp.* v. *Rash*, 520 U.S. 953 (1997)—which held that in a chapter 13 case, collateral retained by the debtor must be valued at the debtor's cost to replace it, not its liquidation value—and clarified that *Rash*'s holding also applied to chapter 7.

[22] *See, e.g.*, Christiansen & Eskridge, *Congressional Overrides of Supreme Court Statutory Interpretation Decisions, 1967-2011*, 92 Tex. L. Rev. 1317, 1385 & nn.245-247 (2014) (documenting 8 "overrides" of this Court's bankruptcy decisions since 1984); Bussel, *Textualism's Failures: A Study of Overruled Bankruptcy Decisions*, 53 Vand. L. Rev. 885, 904, 918 tbl. 2 (2000) (identifying 58 "statutory overrulings" of bankruptcy-related judicial precedents between 1979 and 1998); Eskridge, *Overriding Supreme Court Statutory Interpretation Decisions*, 101 Yale L. J. 331, 344

demonstrates affirmative acquiescence in *Dewsnup*'s holding.

Two related facts reinforce this conclusion. *First*, since this Court's decision in *Dewsnup*—and particularly since 2005, when Congress last significantly reformed the Code—Congress has not only failed to call *Dewsnup* into question, it has also rejected reforms to the Code that would have limited *Dewsnup*'s effect. Numerous hearings have been held on secured creditors' rights in bankruptcy, particularly with respect to permitting debtors to strip down underwater mortgages on principal residences to the present value of the collateral.[23] And since 2005, more than a dozen bills have been introduced that would have done precisely that.[24] While some of those bills were referred out of

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tbl. 4 (1991) (identifying 10 "overrid[es]" of this Court's bankruptcy decisions between 1967 and 1990).

[23] *See, e.g., The Looming Foreclosure Crisis: How To Help Families Save Their Homes, Hearing Before the S. Comm. on the Judiciary*, 110th Cong. (2007); *Straightening Out The Mortgage Mess: How Can We Protect Home Ownership And Provide Relief To Consumers In Financial Distress? (Part II), Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007); *Growing Mortgage Foreclosure Crisis: Identifying Solutions And Dispelling Myths, Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2008); *Helping Families Save Their Homes In Bankruptcy Act Of 2009, And The Emergency Homeownership And Equity Protection Act, Hearing Before the H. Comm. on the Judiciary*, 111th Cong. (2009).

[24] *See, e.g.*, S. 2136, 110th Cong. (2007); H.R. 3609, 110th Cong. (2007); S. 2133, 110th Cong. (2007); H.R. 3778, 110th Cong. (2007) (related to S. 2133); S. 2636, 110th Cong. (2008); H.R. 200, 111th Cong. (2009); H.R. 225, 111th Cong. (2009); S. 61, 111th Cong. (2009); S. 895, 111th Cong. (2009); H.R. 1106, 111th Cong. (2009); H.R. 1587, 112th Cong. (2011); H.R. 4058, 112th Cong. (2012); H.R. 101, 113th Cong. (2013).

Committee and a few made it to a full vote, none has been enacted. Moreover, the legislation Congress rejected would have provided far more protection to secured creditors than overriding this Court's interpretation of §506(d) would have done. For instance, all such bills would have limited lien-stripping to chapter 13, which requires debtors to prepare a repayment plan under judicial supervision and to allocate all disposable income to payments under the plan. *See* 11 U.S.C. §1322(a)(1), (b)(5); *id.* §1325(a)(5), (b)(1). "Congress's failure to act on the bills proposed on this subject"—and its "abundant[] aware[ness]" of *Dewsnup*—"provides added support for concluding that Congress acquiesced." *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 600, 601 (1983).

Second, "*[s]tare decisis* has added force when ... citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations." *Hilton* v. *South Carolina Pub. Rys Comm'n*, 502 U.S. 197, 202 (1991). That is the case here.

Lending markets necessarily factor risk, including risks associated with a mortgagor's bankruptcy, into lending decisions and pricing. The essence of secured credit is that the creditor is able to look to his collateral—and to demand it or the full payment of the debt. For decades, secured credit has been extended and priced based on *Dewsnup*'s holding that liens, including underwater liens, ride through chapter 7 bankruptcy unaffected. It would be an enormous and unwarranted disruption of settled expectations for the Court to reverse course now. "As in other cases involving contract and property rights, concerns of *stare decisis* are ... 'at their acme'" in a case like this one. *Bay Mills*, 134 S. Ct. at 2036; *see also Payne* v. *Tennessee*, 501 U.S. 808,

828 (1991) (collecting cases). The settled expectations that have formed among secured creditors because of this Court's holding and Congress' acquiescence in it counsel strongly in favor of respecting settled precedent.

CONCLUSION

The judgments of the court of appeals should be reversed.

Respectfully submitted.

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STATUTORY ADDENDUM

11 U.S.C. §502. Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

> (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
>
> * * *

11 U.S.C. §506. Determination of secured status

> (a) (1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposi-

tion or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

11 U.S.C. §722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.

11 U.S.C. §1322. Contents of plan

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within

a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;

(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

(11) include any other appropriate provision not inconsistent with this title.

* * *

11 U.S.C. §1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required

by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

* * *

BANKRUPTCY REFORM ACT OF 1978, PUB. L. NO. 95-598, 92 STAT. 2549 (excerpts)

* * *

§506. Determination of secured status

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided under the agreement under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) a party in interest has not requested that the court determine and allow or disallow such claim under section 502 of this title; or

(2) such claim was disallowed only under section 502 (e) of this title.

* * *

§722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

* * *

ACT OF JULY 1, 1898, CH. 541, 30 STAT. 544 (excerpts)

* * *

§57. Proof and Allowance of Claims

(a) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

* * *

(d) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the

court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

(e) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

* * *

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

* * *

§67. Liens

* * *

(d) Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

* * *